

California Regional Water Quality Control Board  
Santa Ana Region  
October 25, 2002

**ITEM: 19**

**SUBJECT:** Administrative Civil Liability Complaint No. R8-2002-0082, Behr Process Corporation, Santa Ana, Orange County

**BACKGROUND**

On September 25, 2002, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2002-0082 (copy attached) to Behr Process Corporation for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$20,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Behr Process Corporation (Behr).

ACL No. R8-2002-0082 was issued by the Executive Officer to Behr for discharging unauthorized, non-storm water containing pollutants to the storm drain.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resource Control Board. Behr filed an NOI and obtained coverage under the General Permit on April 2, 1992, WDID 8 30S002952. The facility is located at 1603 West Alton in the City of Santa Ana.

On July 29, 2002 Board staff received by telephone a complaint from a neighboring business that acid had spilled from the facility to the street and the storm drain. The complainant stated that the spill occurred approximately 2-3 weeks prior. After receiving the complaint, Board staff conducted an investigation of the incident on July 29, 2002. White staining and etching in the gutter were evident from the boundary of the facility to and into a down-gradient catchbasin drop structure and into the flood control channel. When questioned, Behr facility personnel stated that the spill was detected on Monday morning, July 8, 2002, and the product that had spilled was approximately 1,000 gallons of Behr's "Concrete Rust Remover and Etcher", which consists of 44.99% phosphoric acid by weight. Facility personnel stated that the spill originated from a faulty tank valve, which had failed sometime during the weekend. Behr staff showed and explained to Board staff

where the phosphoric acid overwhelmed and/or migrated through breaks in the concrete secondary containment wall; entered an on-site storm drain; filled the 600 gallon clarifier; discharged into the street; entered a down-gradient catchbasin drop structure; and discharged into a flood control channel that is tributary to Upper Newport Bay. Facility personnel stated that the product in the clarifier and the product that had pooled between the facility boundary and the catchbasin drop structure was recovered, as was over 200 gallons of water used to wash the gutters and swales. Facility personnel stated that the spill had been reported to Behr's Director of Environmental and Regulatory Affairs and that an internal spill report had been prepared. However, no notification was made to any regulatory agency until August 13, 2002, two weeks subsequent to Board staff's July 29, 2002 site visit, when Behr personnel filed a report with the Governor's Office of Emergency Services (OES).

By neglecting to implement appropriate Best Management Practices (BMPs), a discharge of unauthorized, non-storm water containing pollutants occurred, resulting in the discharge of pollutants into the storm drain system. The discharger violated Provision A.1 of the General Permit prohibiting discharges of material other than storm water, and pursuant to Water Code Section 13385 (c) (2), civil liability may be imposed for the preceding violations.

Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (10,000) for each day violations occur. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. Based on statements made by the facility personnel, of the approximately 1,000 gallons released, over 600 gallons were recovered, resulting in an unauthorized, non-storm water discharge of less than 1,000 gallons.

Because the exact date and time the discharge began cannot be determined, a minimum timeframe was used to determine the number of days of violation. These days are Sunday and Monday, July 7 & 8, 2002. However, it is possible that the discharge began as early as Friday, the evening of July 5, 2002.

The Water Code specifies factors the Board shall consider in the establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement BMPs to control the discharge of pollutants in storm water runoff. They were also aware of the prohibition on discharge of unauthorized non-storm and storm water containing pollutants from the site. The discharge contained hazardous waste and could have a significant adverse impact on public health and the environment. Behr failed to provide proper notifications to the appropriate agencies in a timely manner.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

A Notice of Violation was issued to Behr by Board staff on February 14, 2001 for the following violations of the General Permit: a break in the containment wall surrounding the "Finished Product" tank area (which includes the tank responsible for this discharge), the practice of pumping collected storm water from the truck docking area without prior sampling as required by the general permit, and needed improvements to general housekeeping practices.

The County of Orange has provided documentation to Board staff on the following historical incidents: on 8/10/99 a spill occurred at the railway loading terminal at the front of the facility; on 4/13/00 a chemical tote was ruptured with a forklift and spilled wash solvent within the facility; on 4/18/00 wastewater with solvents was discharged from the loading facility; and, on 5/5/00 red paint or stain was spilled from the facility into the storm drain swale. These prior complaints and spills were investigated by state and county agencies.

4. Degree of Culpability

All dischargers are responsible for compliance with the Clean Water Act, California Water Code and other laws and regulations. Behr is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act/California Water Code.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively implement BMPs, Behr realized some economic savings. Economic savings from these violations are estimated as follows:

Estimated cost to eliminate non-storm water runoff by properly implementing BMPs such as larger and/or more impervious secondary containment

= \$5,000

Total cost savings

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= \$5,000

**STATEWIDE ENFORCEMENT POLICY**

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

### **RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$20,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on September 25, 2002.

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the matter of:

Behr Process Corporation  
3400 West Segerstrom  
Santa Ana, CA 92702

Attn: Mr. Michael Butler

Complaint No. R8-2002-0082  
for  
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Behr Process Corporation (Behr) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c)(2) of the California Water Code. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on October 25, 2002 at the City Council Chambers of Corona, 815 West 6<sup>th</sup> Street, Corona, CA 92882.
2. Behr or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The storm water runoff from the Behr facility at 1603 West Alton in the City of Santa Ana is regulated under the State's General Permit for Storm Water Runoff Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit), WDID No. 8 30S002952.
5. Behr is alleged to have violated Provision A.1 ("... materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited".) As more fully set forth below, Behr allowed non-storm water discharges to leave their facility, which caused or threatened to cause pollution, contamination, or nuisance. Behr failed to adequately implement appropriate Best Management Practices (BMPs) for the elimination or reduction of pollutants. Behr discharged pollutants to waters of the United States from the facility. Appropriate reporting of the discharge was not performed. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

6. This complaint is based on the following facts:

- a) The facility's Notice of Intent, showing the manufacturing of paint as the type of business, was filed on April 2, 1992 and has remained active to the present;
- b) Board staff received a complaint on July 29, 2002 that "acid had spilled from the facility to the street and the storm drain." The complainant stated that the spill had occurred approximately 2-3 weeks prior;
- c) After receiving the complaint, Board staff investigated the spill on July 29, 2002. White staining and etching in the gutter were evident from the boundary of the facility to and into the drop structure into the flood control channel;
- d) Facility personnel stated that the spill was detected on Monday morning, July 8, 2002 and the product that had spilled was approximately 1,000 gallons of Behr's "Concrete Rust Remover and Etcher", which consists of 44.99% phosphoric acid by weight;
- e) Facility personnel stated that the spill originated from a faulty tank valve, which had failed sometime during the weekend. Board staff observed that the phosphoric acid overwhelmed and/or migrated through breaks in the concrete, secondary containment wall; entered a down-gradient storm drain; filled the 600 gallon clarifier; discharged into the street; and entered a drop structure and a flood control channel that eventually discharges into Upper Newport Bay;
- f) Facility personnel stated that the product in the clarifier and the product which had pooled between the facility boundary and the flood control channel drop structure was recovered, as was over 200 gallons of water used to wash the gutters/swales; and,
- g) Facility personnel stated that the spill had been reported to Behr's Director of Environmental and Regulatory Affairs and that an internal spill report had been prepared, but that no notification was made to any regulatory agency until August 13, 2002, when Behr personnel filed a report with the Governor's Office of Emergency Services (OES).

7. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. Based on statements made by the facility personnel, of the 1,000 gallons released, over 600 gallons were recovered, resulting in an unauthorized, non-storm water discharge of less than 1,000 gallons.

8. Pursuant to Section 13385(c), Behr is civilly liable for the sum of \$20,000 (\$10,000 per day for at least two days of discharge). This unauthorized, non-storm water discharge occurred without adequate or properly maintained BMPs to eliminate/reduce the discharge of sediment-laden water. The total maximum assessment is \$20,000 for the violations cited in Paragraph 6, above.
9. Board staff spent a total of 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00). Behr saved approximately \$5,000.00 by not developing, implementing, and maintaining adequate BMPs to prevent an unauthorized discharge. These factors were considered in assessing the penalty indicated in Paragraph 10, below.
10. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table on the following page. After consideration of these factors, the Executive Officer proposes civil liability be imposed on Behr in the amount of \$20,000 for the violations cited above. An invoice for this amount is enclosed.

Factor	Comment
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	A spill of phosphoric acid solution to private and public storm drain systems occurred without monitoring, reporting, proper action or adequate BMPs to prevent discharge. An unknown quantity of acid was discharged over a weekend, but reportedly less than 1,000 gallons. This discharge visibly damaged the storm drain system and impacted water quality.
<b>B. Culpability</b>	The discharger violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging non-storm water containing pollutants. The discharger also violated the Porter-Cologne Water Quality Control Act by not reporting the spill to the proper authorities.
<b>C. Economic Benefit or Savings</b>	Behr saved approximately \$5000.00 by not developing and implementing proper BMPs.
<b>D. Prior History of Violations</b>	There is an extensive prior history of violations. These include a Notice of Violation issued by Board staff on February 14, 2001 for several violations of the General Permit including an inadequately maintained containment wall surrounding the "Finished Product" tank area and more than six prior complaints and spills investigated by state and county agencies.
<b>E. Staff Costs</b>	Regional Board staff spent approximately 2 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$140.00).
<b>F. Ability to pay</b>	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.



### **WAIVER OF HEARING**

Behr may waive its right to a hearing in this matter. If Behr chooses to do so, please sign the attached waiver, which is on page 6 of this Complaint, and return it, together with the bottom portion of the invoice and a check for \$20,000, to the State Water Resources Control Board in the preprinted enclosed envelope.

If you have any questions, please contact Mark Smythe at (909) 782-4998 or Michael Adackapara at (909) 782-3238, or contact the Board's staff counsel, Jorge Leon, at (916) 341-5180.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gerard J. Thibeault  
Executive Officer

In the matter of:	)	Complaint No. R8-2002-0082
	)	for
Behr Process Corporation	)	Administrative Civil Liability
3400 West Segerstrom	)	
Santa Ana, CA 92702	)	
Attn: Mr. Michael Butler	)	

### WAIVER OF HEARING

I agree to waive Behr Process Corporation's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0082. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$20,000. I understand that I am giving up Behr Process Corporation's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Behr Process Corporation